

1 **Rule 65C. Post-conviction relief.**

2 **(a) Scope.** This rule governs proceedings in all petitions for post-conviction relief filed  
3 under the Post-Conviction Remedies Act, Utah Code [Title 78B, Chapter 9](#). The Act sets  
4 forth the manner and extent to which a person may challenge the legality of a criminal  
5 conviction and sentence after the conviction and sentence have been affirmed in a direct  
6 appeal under [Article I, Section 12](#) of the Utah Constitution, or the time to file such an  
7 appeal has expired.

8 **(b) Procedural defenses and merits review.** Except as provided in paragraph (h), if the  
9 court comments on the merits of a post-conviction claim, it shall first clearly and  
10 expressly determine whether that claim is independently precluded under Section [78B-](#)  
11 [9-106](#).

12 **(c) Commencement and venue.** The proceeding shall be commenced by filing a petition  
13 with the clerk of the district court in the county in which the judgment of conviction  
14 was entered. The petition should be filed on forms provided by the court. The court  
15 may order a change of venue on its own motion if the petition is filed in the wrong  
16 county. The court may order a change of venue on motion of a party for the  
17 convenience of the parties or witnesses.

18 **(d) Contents of the petition.** The petition shall set forth all claims that the petitioner has  
19 in relation to the legality of the conviction or sentence. The petition shall state:

20 (1) whether the petitioner is incarcerated and, if so, the place of incarceration;

21 (2) the name of the court in which the petitioner was convicted and sentenced and  
22 the dates of proceedings in which the conviction was entered, together with the  
23 court's case number for those proceedings, if known by the petitioner;

24 (3) in plain and concise terms, all of the facts that form the basis of the petitioner's  
25 claim to relief;

26 (4) whether the judgment of conviction, the sentence, or the commitment for  
27 violation of probation has been reviewed on appeal, and, if so, the number and title

28 of the appellate proceeding, the issues raised on appeal, and the results of the  
29 appeal;

30 (5) whether the legality of the conviction or sentence has been adjudicated in any  
31 prior post-conviction or other civil proceeding, and, if so, the case number and title  
32 of those proceedings, the issues raised in the petition, and the results of the prior  
33 proceeding; and

34 (6) if the petitioner claims entitlement to relief due to newly discovered evidence, the  
35 reasons why the evidence could not have been discovered in time for the claim to be  
36 addressed in the trial, the appeal, or any previous post-conviction petition.

37 **(e) Attachments to the petition.** If available to the petitioner, the petitioner shall attach  
38 to the petition:

39 (1) affidavits, copies of records and other evidence in support of the allegations;

40 (2) a copy of or a citation to any opinion issued by an appellate court regarding the  
41 direct appeal of the petitioner's case;

42 (3) a copy of the pleadings filed by the petitioner in any prior post-conviction or  
43 other civil proceeding that adjudicated the legality of the conviction or sentence; and

44 (4) a copy of all relevant orders and memoranda of the court.

45 **(f) Memorandum of authorities.** The petitioner shall not set forth argument or citations  
46 or discuss authorities in the petition, but these may be set out in a separate  
47 memorandum, two copies of which shall be filed with the petition.

48 **(g) Assignment.** On the filing of the petition, the clerk shall promptly assign and deliver  
49 it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is  
50 not available, the clerk shall assign the case in the normal course.

51 **(h) Summary dismissal of claims.**

52 (1) The assigned judge shall review the petition, and, if it is apparent to the court  
53 that any claim has been adjudicated in a prior proceeding, or if any claim in the

54 petition appears frivolous on its face, the court shall forthwith issue an order  
55 dismissing the claim, stating either that the claim has been adjudicated or that the  
56 claim is frivolous on its face. The order shall be sent by mail to the petitioner.  
57 Proceedings on the claim shall terminate with the entry of the order of dismissal.  
58 The order of dismissal need not recite findings of fact or conclusions of law.

59 (2) A claim is frivolous on its face when, based solely on the allegations contained in  
60 the pleadings and attachments, it appears that:

61 (A) the facts alleged do not support a claim for relief as a matter of law;

62 (B) the claim has no arguable basis in fact; or

63 (C) the claim challenges the sentence only and the sentence has expired prior to  
64 the filing of the petition.

65 (3) If a claim is not frivolous on its face but is deficient due to a pleading error or  
66 failure to comply with the requirements of this rule, the court shall return a copy of  
67 the petition with leave to amend within 21 days. The court may grant one additional  
68 21-day period to amend for good cause shown.

69 (4) The court shall not review for summary dismissal the initial post-conviction  
70 petition in a case where the petitioner is sentenced to death.

71 **(i) Service of petitions.** If, on review of the petition, the court concludes that all or part  
72 of the petition should not be summarily dismissed, the court shall designate the  
73 portions of the petition that are not dismissed and direct the clerk to serve upon the  
74 respondent a copy of the petition, attachments, ~~and~~ memorandum, and an electronic  
75 court record of the underlying criminal case being challenged, including all non-public  
76 documents, ~~by mail upon the respondent.~~ If an electronic appellate record of the  
77 underlying case has not already been created, the clerk will create the record.

78 (1) If the petition is a challenge to a felony conviction or sentence, the respondent is  
79 the state of Utah represented by the Attorney General. Service on the Attorney  
80 General shall be by mail at the following address:

81 [Utah Attorney General's Office](#)

82 [Criminal Appeals](#)

83 [Post-Conviction Section](#)

84 [160 East 300 South, 6<sup>th</sup> Floor](#)

85 [P.O. Box 140854](#)

86 [Salt Lake City, UT 84114-0854](#)

87 [\(2\)](#) In all other cases, the respondent is the governmental entity that prosecuted the  
88 petitioner.

89 **(j) Appointment of pro bono counsel.** If any portion of the petition is not summarily  
90 dismissed, the court may, upon the request of an indigent petitioner, appoint counsel  
91 on a pro bono basis to represent the petitioner in the post-conviction court or on post-  
92 conviction appeal. In determining whether to appoint counsel the court shall consider  
93 whether the petition or the appeal contains factual allegations that will require an  
94 evidentiary hearing and whether the petition involves complicated issues of law or fact  
95 that require the assistance of counsel for proper adjudication.

96 **(k) Answer or other response.** Within 30 days after service of a copy of the petition  
97 upon the respondent, or within such other period of time as the court may allow, the  
98 respondent shall answer or otherwise respond to the portions of the petition that have  
99 not been dismissed and shall serve the answer or other response upon the petitioner in  
100 accordance with Rule [5\(b\)](#). Within 30 days (plus time allowed for service by mail) after  
101 service of any motion to dismiss or for summary judgment, the petitioner may respond  
102 by memorandum to the motion. No further pleadings or amendments will be permitted  
103 unless ordered by the court.

104 **(l) Hearings.** After pleadings are closed, the court shall promptly set the proceeding for  
105 a hearing or otherwise dispose of the case. The court may also order a prehearing

106 conference, but the conference shall not be set so as to delay unreasonably the hearing  
107 on the merits of the petition. At the prehearing conference, the court may:

108 (1) consider the formation and simplification of issues;

109 (2) require the parties to identify witnesses and documents; and

110 (3) require the parties to establish the admissibility of evidence expected to be  
111 presented at the evidentiary hearing.

112 **(m) Presence of the petitioner at hearings.** The petitioner shall be present at the  
113 prehearing conference if the petitioner is not represented by counsel. The prehearing  
114 conference may be conducted by means of telephone or video conferencing. The  
115 petitioner shall be present before the court at hearings on dispositive issues but need  
116 not otherwise be present in court during the proceeding. The court may conduct any  
117 hearing at the correctional facility where the petitioner is confined.

118 **(n) Discovery; records.**

119 (1) Discovery under Rules [26](#) through [37](#) shall be allowed by the court upon motion  
120 of a party and a determination that there is good cause to believe that discovery is  
121 necessary to provide a party with evidence that is likely to be admissible at an  
122 evidentiary hearing.

123 (2) The court may order either the petitioner or the respondent to obtain any  
124 relevant transcript or court records.

125 (3) All records in the criminal case under review, including the records in an appeal  
126 of that conviction, are deemed part of the trial court record in the petition for post-  
127 conviction relief. A record from the criminal case retains the security classification  
128 that it had in the criminal case.

129 **(o) Orders; stay.**

130 (1) If the court vacates the original conviction or sentence, it shall enter findings of  
131 fact and conclusions of law and an appropriate order. If the petitioner is serving a

132 sentence for a felony conviction, the order shall be stayed for 7 days. Within the stay  
133 period, the respondent shall give written notice to the court and the petitioner that  
134 the respondent will pursue a new trial, pursue a new sentence, appeal the order, or  
135 take no action. Thereafter the stay of the order is governed by these rules and by  
136 the Rules of Appellate Procedure.

137 (2) If the respondent fails to provide notice or gives notice that no action will be  
138 taken, the stay shall expire and the court shall deliver forthwith to the custodian of  
139 the petitioner the order to release the petitioner.

140 (3) If the respondent gives notice that the petitioner will be retried or resentenced,  
141 the trial court may enter any supplementary orders as to arraignment, trial,  
142 sentencing, custody, bail, discharge, or other matters that may be necessary and  
143 proper.

144 **(p) Costs.** The court may assign the costs of the proceeding, as allowed under  
145 Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court  
146 may direct the costs to be paid by the governmental entity that prosecuted the  
147 petitioner. If the petitioner is in the custody of the Department of Corrections, Utah  
148 Code Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial  
149 court shall determine the amount, if any, to charge for fees and costs.

150 **(q) Appeal.** Any final judgment or order entered upon the petition may be appealed to  
151 and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the  
152 statutes governing appeals to those courts.

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